**Machinists Local 1327, International Association of Machinists and Aerospace Workers, AFL-CIO, District Lodge 115 (Dalmo Victor) *and* Viola Lapinski, *and* Hilda Hall *and* Polmyra Gomes.** Cases 20-CB-3488, 20-CB-3491, and 20-CB-3629

September 10, 1982

## SUPPLEMENTAL DECISION AND ORDER

On August 29, 1977, the Board issued a Decision and Order in this proceeding[1] in which it found that a constitutional provision adopted by Respondent, Machinists Local 1327, International Association of Machinists and Aerospace Workers, AFL-CIO, District Lodge 115, did not constitute a restriction on a member's right to resign from Respondent but rather constituted an unlawful attempt by Respondent to restrict the post-resignation conduct of former members.[2] Accordingly, the Board concluded that Respondent had violated Section 8(b)(1)(A) of the Act by imposing fines on the Charging Parties, Viola Lapinski, Hilda Hall, and Polmyra Gomes, for resigning their membership in Respondent and returning to work during the course of a strike. It then ordered Respondent to rescind the fines levied against Lapinski, Hall, and Gomes and to refund to them, with interest, any moneys they may have paid as a result of the unlawfully imposed fines. Thereafter, Respondent filed a petition for review of the Board's Decision and Order with the United States Court of Appeals for the Ninth Circuit and the Board filed a cross-petition for enforcement of its Order.

On October 10, 1979, the court issued its opinion in this case[3] denying enforcement of the Board's Order on the ground that Respondent's constitutional provision was, contrary to the Board's finding, a restriction on a member's right to resign and not an unlawful attempt to restrict a former member's post-resignation conduct. However, noting that the Board had not had the opportunity to determine whether the provision, as construed by the court, was valid, the case was remanded by the court to the Board for further proceedings consistent with its opinion.[4]

On December 12, 1979, the Board, having determined that this and another case,[5] involving the right of a labor organization to impose restrictions on a member's right to resign, presented issues of importance in the administration of the National Labor Relations Act, as amended, scheduled oral argument for January 16, 1980. Thereafter, on January 16, 1980, Respondent, the General Counsel, the Charging Parties, and the American Federation of Labor and Congress of Industrial Organizations[6] presented their oral argument before the Board.

The Board, having duly considered the entire record in this case and the oral arguments presented to it, finds as follows:

Pursuant to the court's remand, we are here asked to decide whether a union can, pursuant to an internal rule prohibiting resignations during a strike or within 14 days preceding its commencement, lawfully impose a fine on members who tendered resignations and returned to work during the course of a strike in apparent violation of the union rule prohibiting such resignations. Respondent asserts that, under the proviso to Section 8(b)(1)(A) of the Act,[7] its constitutional provision is valid and enforceable and that, consequently, the fines imposed thereunder are lawful. The Charging Parties, on the other hand, contend that the restriction in question unreasonably interferes with their Section 7 rights and that the attempt to impose and collect fines under such a provision violates Section 8(b)(1)(A) of the Act. We agree with the Charging Parties' contention.

Initially, we note that in *N.L.R.B.* v. *Allis-Chalmers Manufacturing Co.*, 388 U.S. 175 (1967), the Supreme Court held that a union may, without violating the Act, impose fines on persons who, while retaining full membership rights in the union,

[1] 231 NLRB 719.

[2] The constitutional provision provided as follows:

*Improper Conduct of a Member* . . . Accepting employment in any capacity in an establishment where a strike or lockout exists as recognized under this Constitution, without permission. Resignation shall not relieve a member of his obligation to refrain from accepting employment at the establishment for the duration of the strike or lockout within 14 days preceding its commencement. Where observance of a primary picket line is required, resignation shall not relieve a member of his obligation to observe the primary picket line for its duration if the resignation occurs during the period that the picket line is maintained or within 14 days preceding its establishment.

[3] 608 F.2d 1219.

[4] We have accepted the remand from the court of appeals for the purpose of determining the validity of art. L., sec. III, as a restriction on resignation. We accept the court's determination that this provision is a restriction on resignation only as the law of the case. We otherwise adhere to our earlier determination that this clause constitutes a restriction on post-resignation conduct.

[5] *Pattern Makers' League of North America, AFL-CIO, and its Rockford and Beloit Associations (Rockford-Beloit Pattern Jobbers Association)*, Case 33-CB-1132.

[6] The American Federation of Labor and Congress of Industrial Organizations appeared as *amicus curiae* and argued orally on behalf of the Respondent's position.

[7] Sec. 8(b)(1)(A) of the Act provides that it "shall be an unfair labor practice for a labor organization or its agents—(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: *Provided*, that This paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein . . . ."

Sec. 7 of the Act guarantees to employees the right to organize and to engage in "other concerted activities for the purpose of collective bargaining or other mutual aid or protection," and also the right to refrain from such activities.

cross an authorized picket line and return to work during a strike in contravention of a union rule proscribing such conduct. The Supreme Court found that the right to impose such fines was incidental to the contractual relationship between the union and its members.[8] Once the member lawfully resigns, however, the union's control over that former member ceases and any attempt to impose and collect a fine from that former member for engaging in conduct prohibited by a union rule violates Section 8(b)(1)(A) of the Act.[9] In both *Granite State* and *Booster Lodge, supra*, the Supreme Court found that the union's constitution and bylaws contained no provision restricting a member's right to resign and that, consequently, union attempts to fine former members for crossing an authorized picket line violate Section 8(b)(1)(A) of the Act. Because of the absence of any articulated restriction on a member's right to resign, the Supreme Court in *Granite State* and *Booster Lodge* expressly left open the question, now before us, of the extent to which a "contractual restriction on a member's right to resign may be limited by the Act."[10]

Addressing this question requires us to balance two fundamental principles upon which our labor laws rest, principles that inherently conflict. The first is the right of an employee to refrain from collective activity, a right specifically codified in Section 7 of the Act. The second is the legitimate interest of a certified representative in protecting employees it represents who have joined together in collective economic activity. Reasonable rules governing the acquisition or retention of membership in the union, or resignation therefrom, are necessary to protect that interest. These concerns are fundamental to the overall scheme of the Act and are recognized in the proviso to Section 8(b)(1)(A).

Guided by the Supreme Court's interpretations in this area, we find that neither of these interests is absolute. Thus, a union may impose reasonable time restrictions on the right of members to resign from the union, to facilitate the orderly management of its affairs, including times when a strike may be imminent or is underway. But, in our judgment, the restrictions imposed by Respondent here are unreasonable in that they fail to protect sufficiently the interest of individual employees and are, therefore, impermissible, and we so find.

A union's responsible and operational effectiveness is a key component of national labor policy and enables it to better represent the majority of its members in the collective-bargaining process. A union's most powerful economic weapon—the strike, approved by a majority of its members—is a right embedded in the Act. For a union to determine effectively whether to exercise its right to strike against an employer, it must be able to know with some degree of certainty whether solidarity among its members will be maintained. Indeed, the Supreme Court in *Allis-Chalmers, supra*, recognized that a union's interest in solidarity constitutes a fundamental part of our Federal labor policy. The Court there noted that:

> Integral to this federal labor policy has been the power in the chosen union to protect against erosion of its status under that policy through reasonable discipline of members who violate rules and regulations governing membership. That power is particularly vital when the members engage in strikes.[11]

A literal reading of Section 7 might appear to permit a union member employee to pick and choose among the union actions he wishes to support without fear of union-imposed sanctions for refusing to participate in collective activities of which he does not approve. It is already settled, however, that Section 7 is not nearly that sweeping. The Supreme Court's endorsement of the proposition in *Allis-Chalmers*, that a union may discipline members for crossing a picket line, lays to rest any claim to an absolute right to refrain from union activity, and supports our finding that certain limited restrictions may be imposed on the right to resign from a union.

It is therefore apparent that a union's need to reflect the continuing will of a majority of its members, especially during a strike, reflects not only a legitimate union interest but also implements a right inherent in the statutory scheme of our labor laws. This does not mean, however, that any rule which furthers this legitimate union interest can be deemed to be valid and enforceable.

Although, as Respondent correctly points out, the proviso to Section 8(b)(1)(A) of the Act leaves it free to enact rules pertaining to the acquisition and retention of membership, the Supreme Court has found that "if the rule invades or frustrates an overriding policy of the labor laws the rule may not be enforced, even by fine or expulsion, without violating Section 8(b)(1)."[12] That overriding inter-

[8] In *Allis-Chalmers, supra*, the Supreme Court did not rely on the proviso to Sec. 8(b)(1)(A) but focused its attention instead on the legislative history of the phrase "restrain or coerce" in that section of the Act.

[9] *N.L.R.B.* v. *Granite State Joint Board, Textile Workers Union of America, Local 1029, AFL-CIO* [*International Paper Box Machine Co.*], 409 U.S. 213 (1972); *Booster Lodge No. 405, International Association of Machinists and Aerospace Workers, AFL-CIO* [*Boeing Co.*] v. *N.L.R.B.*, 412 U.S. 84 (1973).

[10] 412 U.S. at 88; 409 U.S. at 217.

[11] 388 U.S. 175, 181.

[12] *Scofield, et al.* v. *N.L.R.B.*, 394 U.S. 423, 429 (1969).

est is the right of an individual employee, once having joined a union, to resign from membership, which may therefore be subject only to a reasonable time limitation.

Respondent's rule prohibiting resignations during the entire course of a strike or within 14 days preceding its commencement does indeed constitute an intrusion into an employee's Section 7 right to resign. Consequently, we must determine if that rule is a reasonable restriction or whether it impermissibly contravenes other matters of concern under the national labor policy.[13]

As noted, Section 7 of the Act specifically grants employees the right to refrain from concerted activities. This right to refrain, as the Ninth Circuit correctly points out, encompasses the right of a member to resign from a union having once joined.[14] Further, this right to resign is not forever and irrevocably lost merely because an employee chooses to become a union member.[15] On the other hand, the right to resign is not a right to instantaneously abandon the union and the fellow members who have determined to exercise collectively their protected right to strike. A union faced with resignations during a strike maintains a continuing obligation to represent all employees in the unit, and to protect the interests of those employees who maintain their membership in the union and continue to honor the strike. Thus, important statutory and policy considerations compel us to balance the right to resign against the legitimate interest of the union, and the majority of its membership which supports the strike, in maintaining its effectiveness. We cannot, as the Charging Parties would have us do, read Section 7 in isolation from the rest of the Act.

In view of the balancing of interests required, we turn to the question of whether a union rule may permissibly differentiate between strike and nonstrike periods. The Supreme Court, in *Scofield, supra*, stated that union members must be free to leave a union to escape membership conditions that they consider onerous.[16] We find nothing in that decision or, indeed, in any of the subsequent Supreme Court decisions concerning this issue, to suggest that a member's right to leave the union and escape the rule could be limited to periods when a strike is not in progress. Rather, quite the converse appears true. In *Granite State*, the Supreme Court recognized that there may be circumstances under which a member might feel compelled to resign during a strike:

> Events occurring after the calling of a strike may have unsettling effects, leading a member who voted to strike to change his mind. The likely duration of the strike may increase the specter of hardship to his family; the ease with which the employer replaces the strikers may make the strike seem less provident.[17]

The Court, noting that there were no restraints on a member's right to resign in that case, went on to state that "the vitality of Section 7 requires that the member be free to refrain in November from the actions he endorsed in May and that his Section 7 rights are not lost by a union's plea for solidarity or by its pressures for conformity and submission to its regime."[18]

Clearly then, the Supreme Court's remarks in *Granite State*, read in conjunction with the *Scofield* requirement that union members must be free to leave the union and escape the rule, lead inescapably to the conclusion that a member's right to resign from a union applies both to strike and nonstrike situations.[19] We hold today that a union rule which limits the right of a union member to resign only to nonstrike periods constitutes an unreasonable restriction on a member's Section 7 right to resign.

In sum, the balancing of competing interests expressed in the Act has led us to find that the right of union members to resign is not absolute. A union may place some reasonable limitation on the right to resign so long as such rules are applicable

[13] In Member Fanning's view the issue in these cases is the right of an employee to exercise his Sec. 7 right to refrain from collective activity by working during a strike. Union coercion of an employee in the exercise of that right is, *prima facie*, a violation of Sec. 8(b)(1)(A). However, an employee who has joined a labor organization, enjoys full membership in that organization, and has agreed not to engage in strikebreaking, may be disciplined by internal union sanctions for violation of that undertaking. *N.L.R.B.* v. *Allis-Chalmers Manufacturing Co.*, 388 U.S. 175. Once the employee lawfully resigns from the union, the union's power over him ends. *N.L.R.B.* v. *Granite State Joint Board*, 409 U.S. 213. The significance of membership in this context is simply as a defense to what otherwise would be a plain unfair labor practice: coercion or restraint of an employee in the exercise of a Sec. 7 right to work during a strike. The question is not the legality of restrictions on resignation, but rather whether or not the restrictions are effective in this context. Thus, in Member Fanning's view, it is the right to refrain from collective activity by working despite a strike—not the "right" to resign—which must be balanced against the right of the labor organization and the striking employees to wage an effective strike.

[14] 608 F.2d 1219, 1221. See also *N.L.R.B.* v. *Martin A. Gleason, Inc.*, 534 F.2d 466, 476 (2d Cir. 1976). Member Fanning does not here endorse the view that there is an independent Sec. 7 right to resign from a labor organization: Divorced from the employment relation, membership is an internal union matter.

[15] See *Local 1384, United Automobile, Aerospace, Agricultural Implement Workers, UAW (Ex-Cell-O Corporation)*, 227 NLRB 1045, 1050 (1977).

[16] See *Local Lodge No. 1994, International Association of Machinists and Aerospace Workers, AFL-CIO (O.K. Tool Company, Inc.)*, 215 NLRB 651, 653 (1974).

[17] 409 U.S. 213, 217.

[18] *Id.* at 217-218.

[19] Indeed, the Board in *Ex-Cell-O, supra*, found unenforceable a union rule that, *inter alia*, accorded no weight to the competing considerations which might have necessitated the resignation of members during a strike.

during both strike and nonstrike periods. In assessing the reasonableness of such rules, we recognize that in a strike context a union may need to reassess its bargaining strategy, to adjust its conduct at the bargaining table, and to consider whether to commence, or to continue, a strike in the face of one or more resignations based on members' unwillingness to support the strike. Moreover, there may also be administrative matters associated with the termination of membership which the union is entitled to a reasonable period to complete.

Accordingly, in order to vindicate its vital interest in assessing its strength throughout the course of a strike, and to protect those employees who have committed themselves to exercise their right to strike, we find that a union is entitled to reasonable notice of the effective date of resignations which occur immediately before or during a strike.

We realize that what may constitute a reasonable period for protecting such institutional interests under one set of circumstances may be unreasonable under another. Nonetheless, we find it salutary to set forth a general rule for the behavior of parties in this area. Having carefully considered the competing interests involved, we find that a rule which restricts a union member's right to resign for a period not to exceed 30 days after the tender of such a resignation reflects a reasonable accommodation between the right of union members to resign from the union and return to work, and the union's responsibility to protect the interests of employees who maintain their membership, as well as its need to dispose of administrative matters arising from such resignations.[20] Such a rule gives clear guidance to employees and unions alike concerning their respective responsibilities and further adds stability to the field of labor relations.[21]

As stated above, the Ninth Circuit found that the constitutional provision in question here constitutes a restriction on resignations.[22] We conclude that Respondent's constitutional provision as a restriction on resignations is unenforceable. Thus, Respondent's rule permits union members to resign only if the resignations are submitted no later than 14 days preceding the commencement of a strike. However, if a member chose not to exercise his right to resign or, for whatever reason, failed to do so prior to the 14-day period preceding the strike, the member was locked into the strike and prohibited from resigning until the strike ended. Such a rule is clearly contrary to our finding here and cannot be enforced. Consequently, Respondent's attempt to impose and to enforce fines on the Charging Parties pursuant to such a rule violates Section 8(b)(1)(A) of the Act. Accordingly, the Respondent shall be ordered to comply with the Board's Order as set forth in the underlying Decision herein.

## ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Machinists Local 1327, International Association of Machinists and and Aerospace Workers, AFL-CIO, District Lodge 115, Burlingame, California, its officers, agents, and representatives, shall take the action set forth in the Board's Order at 231 NLRB 719, dated August 29, 1977.

CHAIRMAN VAN DE WATER and MEMBER HUNTER, concurring:

We agree with our colleagues in the majority that Respondent violated Section 8(b)(1)(A) by its imposition of fines against employees who resigned their union membership and returned to work during the strike. We also agree that Respondent's constitutional provision is an unreasonable restriction on the members' right to resign from the Union. Unlike our colleagues, however, we would not find reasonable a 30-day limitation on the effective date of an employee's resignation from a union.[23] As set forth below, we believe the 30-day rule promulgated by the majority is an arbitrary exercise of this Board's authority that is premised upon faulty analysis and rationale. The few arguments presented in support of the rule, in our view, are contrary to fundamental principles embodied in our Act, inconsistent with the teachings of relevant Supreme Court decisions, and represent a transparent effort to achieve a legislative result rather than a reasoned legal conclusion. Contrary to our col-

[20] Obviously, where the member has not been apprised of the existence of such a rule prior to tendering his resignation, then the member's resignation becomes effective immediately rather than upon the expiration of the 30-day period following such tender of resignation. See *General Teamsters Local 439, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Loomis Courier Service, Inc.)*, 237 NLRB 220, 223 (1978); *Ex-Cell-O Corporation*, 227 NLRB at 1048. Further, where the members have been apprised of the existence of such a rule, the running of the 30-day period before the resignation becomes effective must be triggered solely by the member's notice to the union, and not contingent on any other obligations.

[21] We realize, however, that under extraordinary circumstances, a union may need more than the 30 days found reasonable herein to dispose of the administrative matters arising from the resignations. In those cases, the Board will determine whether or not circumstances exist warranting a longer period of time.

[22] We adopt this finding as law of the case only. See fn. 4, *supra*.

[23] Although our response to the majority is cast in terms of the majority's 30-day rule, we note with dismay that the "rule" is not so precisely contained. Thus, at fn. 21 of its Decision, the majority states that "extraordinary circumstances" may justify a restriction of longer than 30 days. Accordingly, despite the expressed desire for a "salutary" rule that provides "clear guidance," the majority has constructed a loophole tailormade for enterprising litigators that will insure continued litigation and uncertainty in this area.

leagues, we would find any restriction imposed upon a union member's right to resign to be unreasonable and, therefore, we would find the imposition of any fines or other discipline premised upon such restrictions to be violative of Section 8(b)(1)(A).

The starting point for meaningful analysis of the issue presented here is the quartet of cases[24] decided by the Supreme Court that examine the union's authority to enforce its rules against member and nonmember employees within the confines of Section 8(b)(1) and related provisions of the Act. A rather simple framework can be constructed from these holdings: (1) If an employee is not a full union member, the union may not enforce its rules against that employee; (2) if an employee is a full union member the union can, within specified limits, enforce its reasonable rules against the employee-member; and (3) if an employee resigns from the union, the union loses its authority to enforce its rules against the employee. Simply stated, the question presented here is whether a union can lawfully enforce a rule that restricts an employee's ability to place himself into the third category. In other words, can a union rule be used to compel an employee to remain subject to union discipline for 30 days beyond the employee's expressed desire to sever ties with the union?[25]

In resolving the issue before us, we believe the majority has failed to look beyond the Court's specific holdings and examine the principles and concepts which led to the particular results. For the Court's decisions contain findings and determinations that are clearly applicable to the issue before us. Indeed, the Court has established a specific test, largely ignored by the majority, by which the lawfulness of a union's enforcement of its rules against members and nonmembers is to be tested. We believe that a proper application of these principles and the specific test prescribed by the Court effectively preclude this Board from sanctioning a rule that restricts the right of resignation.

In *Allis-Chalmers*, the Court held that a union could discipline its full members for returning to work during a strike. In the simplest terms the Court ruled that a union's reasonable enforcement of a legitimate rule against its full members does not constitute restraint and coercion within the meaning of Section 8(b)(1).[26] In so ruling, the Court articulated a bright line distinction between "internal" and "external" union actions with the former being insulated from the proscriptions of Section 8(b)(1). The Court defined internal actions as those applying to full union members pursuant to a nonarbitrary rule aimed at achieving a legitimate union objective.[27] External actions, i.e., those proscribed by Section 8(b)(1), were defined as those aimed at interfering with an employee's employment status[28] or at interfering with the rights of nonmembers or employees outside the bargaining unit.[29] Having established this distinction, the Court found that the union's enforcement of its rules prohibiting the return to work during a strike against its full members was an internal matter and, therefore, insulated from the proscriptions of Section 8(b)(1).

Significantly, for our purposes here, the Court's establishment of a dichotomy between "internal" and "external" matters by which it sanctioned union restrictions on employee-members returning to work during a strike was not predicated upon any "balancing" of conflicting rights between unions and employees. Nor was the decision predicated upon a construction of Section 8(b)(1)(A)'s proviso which allows a union to establish rules for the acquisition or retention of membership. Instead, the Court's ruling was premised upon a detailed review of the Act's legislative history and an analysis of the Act's interrelated provisions. Accordingly, the decisive importance of whether a union action is internal or external in nature in determining whether enforcement of a union rule violates Section 8(b)(1)(A) is a concept embedded in the very fabric of our Act.

The concepts established in *Allis-Chalmers* were reiterated and expanded in *Scofield* where the Court again sanctioned the enforcement of what was determined to be a legitimate union rule on the

[24] *N.L.R.B.* v. *Allis-Chalmers Manufacturing Co.*, 388 U.S. 175 (1967); *Scofield, et al.* v. *N.L.R.B.*, 394 U.S. 423 (1969); *N.L.R.B.* v. *Granite State Joint Board, Textile Workers Union of America, Local 1029, AFL-CIO [International Paper Box Machine Co.]*, 409 U.S. 213 (1972); *Booster Lodge No. 405, International Association of Machinists and Aerospace Workers, AFL-CIO [Boeing Co.]* v. *N.L.R.B.*, 412 U.S. 84 (1973).

[25] Concededly, the Court has not specifically passed upon the precise issue of whether a union may restrict its members' right to resign. This does not, however, give rise to what appears to be a tacit assumption by the majority, i.e., that the Board has free rein to fashion a rule that satisfies some personal sense of equity and balance. Although the actual holdings of the Court may not bind us here, the principles established in reaching those holdings cannot be ignored.

[26] In its characterization of the Court's holding, we fear the majority has confused the Court's ruling with its own desire to reach a particular result. Thus, the majority states, "The Supreme Court's endorsement of the proposition in *Allis-Chalmers*, that a union may discipline members for crossing a picket line, lays to rest any claim to an absolute right to refrain from union activity, and supports our finding that certain limited restrictions may be imposed on the right to resign from a union." In reality, as noted above, the Court held only that such union discipline of its full members is not restraint and coercion within the meaning of Sec. 8(b)(1). While this holding may well mean that a full union member does not have an absolute right to refrain, without penalty, from concerted or other union activities, it simply does not necessarily follow that nonmembers do not enjoy an absolute right to refrain or that once a member acts to sever ties with the union that his Sec. 7 rights are any less absolute than if he never had joined the union.

[27] 388 U.S. at 195.

[28] *Ibid.*

[29] *Id.* at fn. 25 and accompanying text.

basis that it was an internal union matter.[30] In so doing, the Court reiterated that a union's authority to discipline employee-members is limited to actions that are purely internal in nature.[31] In addition, the Court, for the first time, precisely articulated the test to be utilized in evaluating the lawfulness of attempts to enforce union rules. Thus, the Court held that:

> § 8(b)(1) leaves a union free to enforce a properly adopted rule which reflects a legitimate union interest, impairs no policy Congress has embedded in the labor laws, and is reasonably enforced against union members who are free to leave the union and escape the rule.[32]

In *Granite State*,[33] the Court confronted a situation where the union sought to enforce its legitimate rule against returning to work during a strike in an external manner, i.e., against nonmembers. Applying the *Scofield* test, the Court found that such efforts violated Section 8(b)(1)(A). Because, in our view, the Court's decision in *Granite State* effectively undermines the purported bases for establishing a 30-day limit on resignations, we feel it is necessary to give that decision more than the cursory treatment provided by the majority.

In *Granite State*, the union membership, several days before the existing collective-bargaining agreement expired, authorized a strike if agreement on a new contract was not reached by a specific date. No agreement was reached and a strike commenced. A few days into the strike the employees met and *unanimously* adopted a resolution which provided that a member who "aided or abetted the Company during the strike" would be subject to a fine of up to $2,000. Six weeks into the strike, two members resigned their union membership and returned to work. Beginning 6 months later, 29 members resigned and returned to work. The union imposed fines against all 31 employees.

The Board held that the fines against all 31 employees violated Section 8(b)(1)(A).[34] The Court of Appeals for the First Circuit, however, denied enforcement of the Board's Order.[35] The First Circuit reasoned that, because the employees had mutually relied upon each other's commitment to strike, all employees were bound to honor the strike under a "mutual subscription" theory. The court also advanced the theory that a union's interest in strike solidarity could be reconciled with Section 7's right to refrain by treating an employee's agreement to join a strike and impose sanctions for strikebreaking as a waiver of his or her Section 7 right. Responding to the *Scofield* test, the First Circuit explained that it did not read *Scofied* as requiring that a union member be "free to leave the union and escape the rule" at any time and under all circumstances. Nor did the court find a deleterious impact on Federal labor policy, since the court concluded that the employee-members had waived their Section 7 rights.

In an eight-to-one decision,[36] the Supreme Court reversed the First Circuit and found that the fines imposed violated Section 8(b)(1)(A). In its decision, the Court began by reiterating the *Scofield* test and by again emphasizing the distinction between a union's internal and external actions. As for the latter concept, the Court stated:

> The *Scofield* case indicates that the power of the union over the member is certainly no greater than the union-member contract. Where a member lawfully resigns from a union and thereafter engages in conduct which the union rule proscribes, the union commits an unfair labor practice when it seeks enforcement of fines for that conduct. That is to say, when there is a lawful dissolution of a union-member relation, the union has no more control over the former member than it has over the man in the street.[37]

The Court then addressed the First Circuit's contention that the employees had waived their Section 7 rights by the strike vote and the authorization of fines for strikebreaking, stating: "We give that factor little weight."[38] In this regard, and also in response to the lower court's reliance upon the union's interest in strike solidarity, the Court stated:

> Events occurring after the calling of a strike may have unsettling effects, leading a member who voted to strike to change his mind. The likely duration of the strike may increase the specter of hardship to his family; the ease with which the employer replaces the strikers may make the strike seem less provident. . . . [W]e conclude that the vitality of § 7 requires that the member be free to refrain in November from the actions he endorsed in May and that *his § 7 rights are not lost by a union's plea for*

[30] The union rule at issue imposed production ceilings and provided that union members who exceeded these ceilings would be subject to fines.

[31] 394 U.S. at 435-436.

[32] *Id.* U.S. at 430.

[33] 409 U.S. 213 (1972).

[34] 187 NLRB 636 (1970).

[35] 446 F.2d 369 (1st Cir. 1971).

[36] Chief Justice Burger rendered a concurring opinion which provided, *inter alia*, that "where the individual employee has freely chosen to exercise his legal right to abandon the privileges of union membership, it is not for us to impose the obligations of continued membership." 409 U.S. at 218 (Chief Justice Burger, concurring.)

[37] 409 U.S. at 217.

[38] *Id.*

> *solidarity or by its pressures for conformity and submission to its regime.* [409 U.S. at 217-218. Emphasis supplied.][39]

Finally, in *Booster Lodge*,[40] a unanimous Court[41] found that the union violated the Act by fining employees who returned to work after resigning their membership. In large part, the Court simply applied its past decisions in this area. Of significance, however, is the Court's disposal of the union's claim that its rule had been consistently interpreted to bind an employee to a strike notwithstanding his resignation. After noting that no such interpretation had been found by the Board and the court of appeals, the Court stated:

> But we are no more disposed to find an implied post-resignation commitment from the strikebreaking proscription in the Union's constitution here than we were to find it from the employees' participation in the strike vote and ratification of penalties in [*Granite State*]. [412 U.S. at 89.]

From the foregoing, it is plain that there are certain fundamental principles that must be applied in evaluating a union rule restricting an employee-member's right to resign for a 30-day (or any other) time period. First, the rule must be nonarbitrary and aimed at advancing a legitimate union interest. Second, there is inherent in the very fabric of our Act a bright line distinction between internal and external union actions. So long as the union action in wholly internal in nature, it may be lawful. When its reach becomes external, it runs afoul of Section 8(b)(1)(A). Third, a union rule can survive scrutiny only if it does not impair a policy Congress has embedded in the labor laws. Fourth, union rules that have been found lawful in the past have contained the implicit safeguard which provides that the rule must be reasonably enforced against union members who are free to leave the union and escape the rule. Finally, once an employee becomes a union member, he cannot be bound forever to the rules and coercive force of the union, but must be allowed to change his mind based upon subsequent developments. We contend that, when measured against these standards, the 30-day rule espoused by our colleagues must fall.

Unfortunately, however, before proceeding to what we deem to be the appropriate analysis, we are compelled to respond to the majority on its own terms because so many of the fundamental concepts enumerated above are ignored by our colleagues. Instead of a meaningful legal analysis, the majority presents what amounts to a seemingly self-evident syllogism which goes as follows: (1) employees have a Section 7 right to refrain from concerted activities; (2) unions have a legitimate interest in maintaining strike solidarity and protecting the interests of employees who honor a strike decision; (3) neither the employees' rights nor the union's interests are absolute; (4) if the Board selects a time period for restricting resignations, the conflicting interests will be accommodated and justice will be served. As is often the case with syllogistic arguments, the conclusion only follows if all the premises are correct. We respectfully submit that some of our colleagues' premises are fatally flawed and that purported "balancing" is little more than a preemptive striking of a compromise best left in the legislative arena.

Clearly, we agree with the first premise. The text of Section 7, by its very terms, grants employees the *right* to refrain from union and other concerted activities.[42] Nor can there be serious quarrel with the premise that unions have a legitimate *interest* in maintaining strike solidarity and protecting the interests of striking employees.

The third premise is another matter, however, since there we find a fundamental flaw in the majority's analysis. For when our colleagues adopt the proposition that neither the employee *rights* at issue nor the union *interests* being advanced are absolute, they implicitly equate the express Section 7 rights of employees with a union's institutional interest in strike solidarity, thereby setting the stage for their purported "balancing" of "conflicting interests." Yet, such an equation ignores the fact that it is not the mere existence of conflict between labor disputants that mandates and justifies an "accommodation" or "balancing." Instead, the substan-

---

[39] The oft-quoted "May to November" change-of-mind period is somewhat inaccurate inasmuch as two of the fined employees resigned within 6 weeks of the strike's commencement and the fines against them were found violative of Sec. 8(b)(1)(A).

[40] 412 U.S. 84 (1973).

[41] Justice Blackmun, who was the lone dissenter in *Granite State*, rendered a concurring opinion.

[42] Specifically, two related Sec. 7 rights are involved here—the right to resign membership in a union, and the right to return to work during a strike. *Booster Lodge, supra*, 412 U.S. at 87-88; *Granite State, supra*, 409 U.S. at 217-218; *N.L.R.B.* v. *Machinists Local 1327, International Association of Machinists and Aerospace Workers, AFL-CIO, District Lodge 115 [Dalmo Victor]*, 608 F.2d 1219, 1221 (9th Cir. 1979); *N.L.R.B.* v. *International Association of Machinists and Aerospace Workers, Merritt Graham Lodge No. 1871 [General Dynamics Corp.]*, 575 F.2d 54, 55 (2d Cir. 1978).

The preservation of employee freedom in this sphere is also manifested in Sec. 8(b)(2) and the second proviso to Sec. 8(a)(3). For those provisions work to insure that no employee can be compelled to become a full union member, thereby leaving an employee who so chooses free to refrain from union or other concerted activities. *N.L.R.B.* v. *General Motors Corp.*, 373 U.S. 734, 742 (1963): "'Membership' as a condition of employment is whittled down to its financial core." Thus, the Board has held, with court approval, that a union violates Sec. 8(b)(1)(A) when it refuses to accept the resignations of employees on the ground that full membership is a condition of employment. *United Stanford Employees, Local 680, Service Employees International Union, AFL-CIO (The Leland Stanford Junior University)*, 232 NLRB 326 (1977), enfd. 602 F.2d 980 (9th Cir. 1979).

tial diminution of express statutory rights is warranted only when the statutory right collides with a corresponding *right* of relatively equal import and legal significance.[43] We contend most strongly that the express Section 7 rights of employees are surely more than mere "interests" subject to limitation because their operation somehow impinges upon the institutional desires of a union. Conversely, a union's institutional *interests*, to our knowledge, have never been elevated to the point where they stand on equal footing with, and, indeed, override and negate the fundamental protections of Section 7. Thus, under the banner of "balancing," our colleagues negate for 30 days the express employee protections afforded by one of the Act's most important provisions. One can only wonder what other rights granted by the Act will be diminished or eliminated upon the majority's discovery that they too conflict with a "legitimate interest" of a union or an employer. In short, by equating institutional "interests" with statutory "rights" and utilizing the existence of "conflict" between disputants to justify reduction of the Act's protections, we respectfully submit that our colleagues are engaging in legislating rather than interpreting our Act's intent and objectives. This they may not do.

Even granting the premise that employees' statutory rights and the union's institutional interests are subject to balancing and mutual accommodation, we suggest that the majority's rule does not give sufficient consideration to all of the relevant circumstances. Thus, it seems to us that the majority underplays the significance of the practical realities facing an employee in a strike situation that the Court enumerated in *Granite State* in support of the concept that a union member must "be free to refrain in November from actions endorsed in May."[44] Indeed, as noted in footnote 39, *supra*, this period is more accurately one of 6 weeks. For nowhere in the majority opinion is there any meaningful attempt to explain why a member would not be free to refrain from an action he agreed to 30 days earlier but is free to do after 42 days.[45] Nor does the majority appear to take into account the Court's concern for an employee who initially supports the strike but later undergoes a change of mind because of family hardship or the relative ease with which the employer is able to secure permanent replacements.[46] Again, if we are to balance employee rights against union interests, substantially more consideration of the dilemma faced by an employee who cannot continue to adhere to a strike without placing himself and his family in dire financial straits is surely required.[47]

Apart from the fact that the 30-day rule fails in its own "balancing" premise, it also fails to withstand scrutiny under the relevant Court decisions discussed above. Initially, in this regard, it is clear that, by promulgating a 30-day restriction on resignations, this Board is seeking to redefine the internal/external dichotomy which the Supreme Court has found to be embedded in our Act's very fabric. As discussed in detail above, the Court has consistently interpreted the Act and its underlying purposes to prohibit a union from exercising its coercive power in external matters. A primary basis for defining external versus internal matters has been the fact of the employee's union membership. Yet, by allowing a union to compel an employee to remain a member subject to the union's rules and authority for 30 days beyond an expressed desire to resign, the majority has effectively altered the internal/external distinction which Congress has so carefully embedded in the Act. And the majority has accomplished this end by creating the *fiction* of continued full membership.[48] Thus, unions will be able to expand substantially their domain of authority and to regulate conduct heretofore beyond its

[43] There are, of course, rights of sufficient import and significance to justify the imposition of some limitations on employees' Sec. 7 rights. See, e.g., *N.L.R.B.* v. *The Babcock & Wilcox Company*, 351 U.S. 105 (1956), which strikes a balance between employees' Sec. 7 rights and the property rights of individuals that are grounded in Common Law and the Constitution.

[44] 409 U.S. at 217–218.

[45] Indeed, apart from stating the need for a "salutary" rule that eliminates confusion, we are at a total loss in perceiving the significance of 30 days as a benchmark. Why is 10 days too short a period? Why is 31 days too long? We would hope that our colleagues have some nonarbitrary basis for the selection of this time period. For if they do not, their action is nothing more than an arbitrary act of legislative compromise.

[46] It should not be forgotten that an employer can and often does hire replacements immediately after a strike commences. While a 30-day waiting period, enforceable by substantial fines, may appear to some to be "reasonable," the real life dilemma created for an employee subjected to the rule is that his job may well be long gone by the time he is able to take any meaningful steps to retain it.

[47] When viewed in the context of the potentially severe hardships visited on employees who are precluded from refraining from a strike for 30 days, one questions the majority's willingness to adhere to the Court's admonition that, in balancing conflicting rights, any accommodation must be achieved "with as little destruction of one as is consistent with the maintenance of the other." *Babcock & Wilcox*, *supra* at 112. Surely a union is vested with sufficient lawful means of persuasion and peer pressure to preserve strike solidarity without requiring suspension of the Act's fundamental protections. In fact, if a union is unable to preserve strike solidarity through less restrictive means than sanctions that override the Act's protections, perhaps it should reconsider its decision to strike in the first place.

[48] It bears emphasis that this fiction of continued membership arises not out of the employees' expressed desires or the practical realities of the situation but, instead, is the creation of a union rule. Thus, a boilerplate provision in a union's constitution or bylaws that can be adopted and operate in an inflexible manner, oblivious to the circumstances facing the member in a strike situation, can serve to circumscribe dramatically an employee's statutory rights and potential economic livelihood. Such "agreements" that result from union membership have accurately been termed contracts of adhesion. See *Summers, Legal Limitations on Union Discipline*, 64 Harv. L. Rev. 1049; Sould, *Some Limitations Upon Union Discipline Under the NLRA: The Radiation of Allis-Chalmers*, 1970 Duke L.J. 1137 (1970).

control merely by adopting a "rule" that establishes a facade of full membership for 30 days. In other words, by a mere convention vote, a union can transform a plainly external action into an internal one and thereby insulate itself from the intended scope and objectives of the Act.[49]

The 30-day rule also fails to pass muster under the *Scofield* test, reiterated in *Granite State* and *Booster Lodge*. Under that test, a union rule must (1) serve a legitimate union interest; (2) impair no policy Congress has embedded in the labor laws; and (3) leave members free to leave the union and escape the rule. We respectfully submit that to the extent the majority opinion even seeks to apply this test, it, once again, confuses the applicable concepts and distorts the appropriate analysis.

Plainly, a union's interest in maintaining strike solidarity is a legitimate one that satisfies the first part of the *Scofield* test. As for the second part of the test, however, the 30-day rule runs directly afoul of at least three policies Congress has embedded in the labor laws, i.e., the right of employees to refrain from concerted activities and the policy, discussed above, limiting the coercive authority of unions to wholly internal matters. Still a third policy negated by the 30-day rule is that embodied in Section 8(b)(2) and in the proviso to Section 8(a)(3) which together allow a union to compel core membership, but prohibit it from compelling full membership.

We can only presume that the majority seeks to negate these impositions on statutory policy by again relying on the union's interest in strike solidarity. Yet, the existence of a legitimate union interest is nothing more than a threshold issue in determining the lawfulness of a union rule. For if the mere existence of a legitimate union interest is sufficient to overcome the policies Congress has embedded in the Act, why, pray tell, has the Supreme Court consistently treated the two as separate and distinct conjunctive requirements? We submit that to utilize the legitimate union interests in strike solidarity to satisfy the initial prong of the *Scofield* test, and then revive it to negate congressional policy in addressing the second prong of the test, renders the three-part test redundant and virtually useless.[50] Indeed, in *Granite State* the Court recognized that a union advanced a legitimate interest in seeking to prohibit the return to work during a strike. But the Court then moved to the second part of its test and declared that "§ 7 rights are not lost by a union's plea for solidarity or by its pressures for conformity and submission to its regime."[51]

Regarding the final portion of the *Scofield* test, a rule restricting resignations for 30 days is not a rule reasonably enforced against union members who are free to leave the union and avoid the rule. Nor is it mere sophistry to rely on this factor in striking down a restriction on resignation. For this prong of the test represents more than a consideration to be applied only in cases that do not involve resignation rules. Indeed, it embodies an essential safeguard in protecting individuals' Section 7 rights and limiting the coercive power of unions. Nor can that safeguard be eliminated without doing violence to the Act's interrelated provisions and to the precise objectives of Congress. In short, at least part of the justification for allowing the union to enact and enforce the rule in the first place is that the member is free to leave the union and thus escape the application of that rule. To allow a union to eliminate this safeguard is simply to cede congressional authority to various private parties.

In summary, we believe the majority's 30-day restriction on resignations is premised upon sham "balancing" that represents nothing more than an arbitrary compromise over how far a union can unilaterally abrogate individual statutory rights and the congressional scheme of labor relations. The 30-day rule runs directly counter to relevant Supreme Court precedent, ignores the test prescribed for evaluating the validity of a union's rules, and generally violates a host of principles and policies embedded in our Act.

Finally, since the majority has set forth what it would hold in an appropriate case, we shall state our view. Any union rule that restricts a member's right to resign is unreasonable and any discipline taken by a union against an employee predicated on such a rule violates Section 8(b)(1)(A). In addition, for a resignation to be valid, it must be in writing and is effective upon receipt by the

[49] It seems self-evident that merely because a union adopts a rule all conduct by employees that violates that rule is not, *ipso facto*, an internal union matter. The majority seems to forget, however, that the internal/external determination turns upon the scope and impact of the rule and not on the internal source of the rule's creation.

[50] Here again, a major flaw in the majority's analysis springs from the faulty premise that union interests and statutory rights are coequals that can serve to negate each other and compel that a "balance" be struck between them.

[51] 409 U.S. at 218. Of course, in *Granite State* there was no union rule restricting resignation although the employees there had voted to impose sanctions on themselves for any strikebreaking activity. Thus, the only substantial difference here is a union rule adopted for the avowed purpose of restricting strikebreaking rather than an employee-adopted rule with the same objective. We fail to see how the employee rule is insufficient to negate congressional policy while a union rule with the same objective can overcome the intent of Congress. Indeed, binding an employee into forsaking his statutory rights for 30 days by invoking a union rule is yet another step removed from the employees' self-limitations found insufficient in *Granite State* and also fails to take into account the plain adhesive nature of the so-called employee/union contract. See fn. 48, *supra*.

union.[52] Finally, we would hold that a union may not condition a resignation upon the payment of any dues or assessments. Clearly enough, the union, like an employer, is able to recoup any moneys owed it through regular legal proceedings and we find no basis for holding an employee hostage by prohibiting resignations until such fiscal matters are settled.

MEMBER JENKINS, dissenting:

Contrary to my colleagues, I remain convinced[53] that Respondent's constitutional provision prohibiting resignations during a strike or within 14 days preceding its commencement is a reasonable and valid restriction on members' resignations, protected by the proviso to Section 8(b)(1)(A) of the Act. Accordingly, I would dismiss the complaint in its entirety.

This proceeding was submitted to the Board through a stipulation of facts. The complaint alleged that Respondent violated Section 8(b)(1)(A) by fining three of its members who, during the course of an officially sanctioned strike against the Employer, attempted to resign their memberships in Respondent and thereafter crossed Respondent's picket line to return to work for the Employer. The stipulated record reveals that Respondent has been the collective-bargaining representative of the Employer's employees since approximately 1949. On or about April 19, 1974, Respondent held a meeting of its members and informed them of a then newly adopted constitutional amendment which provided as follows:

> *Improper Conduct of a Member* . . . Accepting employment in any capacity in an establishment where a strike or lockout exists as recognized under this Constitution, without permission. Resignation shall not relieve a member of his obligation to refrain from accepting employment at the establishment for the duration of the strike or lockout within 14 days preceding its commencement. Where observance of a primary picket line is required, resignation shall not relieve a member of his obligation to observe the primary picket line for its duration if the resignation occurs during the period that the picket line is maintained or within 14 days preceding its establishment.

At all times since that meeting, the individual Charging Parties, each of whom was an employee of the Employer, have been aware of the constitutional provision. On June 3, 1974, Respondent held another membership meeting for the purpose of taking a strike vote. Prior to the actual strike vote, Respondent again informed its members, including the individual Charging Parties, about the constitutional provision and warned them that anyone crossing the picket line could be fined. On the same date, following affirmative authorization of the membership through the strike vote, Respondent and its membership, including the Charging Parties, began an economic strike against the Employer and established a lawful picket line. The strike continued, and the picket line was maintained, during all times relevant herein. On February 14, 1975,[54] Charging Parties Hall and Lapinski resigned membership in the Union and, on February 18, returned to work at the struck plant. The Union received notice of these resignations on February 19. On April 16, the Union fined Hall and Lapinski $2,277.50 each for working behind the Union's picket line. The amount of the fines equaled the sum received by Hall and Lapinski from the Union as strike benefits during the period that they honored the picket line. Thereafter, on May 8, Charging Party Gomes submitted her resignation from membership. The Union received Gomes' resignation on May 10, and she returned to work at the struck plant on May 12. On August 6, the Union fined Gomes $1,125 for working behind the Union's picket line. Again, the amount of the fine equaled the sum Gomes received as strike benefits while she observed the Union's picket line.[55]

The majority accepts all of the foregoing, as they must, but despite these uncontroverted facts decides today that Respondent's actions in fining the Charging Parties for violating its duly adopted constitutional provision were contrary to Section 8(b)(1)(A) of the Act, holding that the constitutional provision quoted above is *per se* illegal. I cannot agree. Rather, I would find that Respondent was entitled to levy fines against the Charging Parties as a means of enforcing a lawful constitutional provision governing retention of membership, a subject expressly excluded from the scope of Section 8(b)(1)(A) by the proviso thereto, and within the ambit of a union's control over its internal affairs.

Any analysis of the issues presented herein must begin with an examination of the Supreme Court's decisions in *Allis-Chalmers*,[56] *Granite State*,[57] and

[52] We do not view such requirements as "restrictions" on resignation. Rather, they are simply the ministerial acts necessary to ensure that a member's resignation is voluntary and has, in fact, occurred.

[53] See my previous dissent in this proceeding, reported at 231 NLRB 719, 722 (1977).

[54] Unless otherwise noted, all dates hereinafter are in 1975.

[55] There is no allegation that the amount of the fines was unreasonable or excessive.

[56] *N.L.R.B.* v. *Allis-Chalmers Manufacturing Co.*, 388 U.S. 175 (1967).

[57] *N.L.R.B.* v. *Granite State Joint Board, Textile Workers Union*, 409 U.S. 213 (1972).

*Booster Lodge*.[58] In *Allis-Chalmers*, the Supreme Court held that a union rule prohibiting its members from crossing an authorized picket line or returning to work during the course of a strike was a legitimate internal regulation of the conduct of its members, and that neither the rule nor its enforcement against members through imposition of court-enforceable fines was violative of Section 8(b)(1)(A) of the Act. In *Granite State* and *Booster Lodge*, the Supreme Court held that sanctions against former members who resigned their membership prior to crossing authorized picket lines were violative of Section 8(b)(1)(A) of the Act, reasoning that "when there is a lawful dissolution of a union-member relation, the union has no more control over the former member than it has over the man in the street."[59] It must be stressed, however, that in both *Granite State* and *Booster Lodge* the Court expressly limited its holding to factual situations where, as in those cases, there was no constitution or bylaw provision defining or limiting the circumstances under which a member could resign from the union.[60] Indeed, the Court specifically reserved for later consideration the question now before the Board; to wit, "the extent to which contractual restriction on a member's right to resign may be limited by the Act."[61]

In examining this issue, I am guided by the explicit terms of Sections 7 and 8(b)(1)(A) of the Act, and by the Supreme Court's interpretation of Section 8(b)(1) contained in its decision in *Scofield, et al.* v. *N.L.R.B.*[62] Briefly stated, Section 7 gives all employees the right to engage in union and concerted activities, or to refrain from those activities. Section 8(b)(1)(A) provides that it shall be an unfair labor practice for any labor organization to restrain or coerce employees in the exercise of the rights guaranteed them by Section 7. Importantly, however, Congress expressly limited the breadth of Section 8(b)(1)(A) by including therein a proviso specifying that such provision "shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein . . . ." These interrelated provisions were addressed by the Supreme Court in *Scofield*. There, the Court stated that it had taken and would continue to take a dual approach to the problem of evaluating the validity of union fines under Section 8(b)(1)(A) of the Act, such that properly adopted union rules, reflecting legitimate union interests, which impair no policy Congress has imbedded in the labor laws, and which are reasonably enforced against members, are permissible under that section, whereas fines against nonmembers would violate that section. That statement reflects the Court's view, set forth in *Scofield* and in *Allis-Chalmers*, that union rules and their enforcement are an internal union matter governed by contractual considerations as embodied in the union's constitution and bylaws, which are agreed to by the members in consideration for the benefits attained by membership.

Applying the *Scofield* criteria to the constitutional provision here in issue, there can be no doubt but that the provision was properly adopted by the Union and its membership, a fact conceded by my colleagues. There also is no doubt but that the provision reflects legitimate union interests. As the Supreme Court observed in *Allis-Chalmers*:[63]

> National labor policy has been built on the premise that by pooling their economic strength and acting through a labor organization freely chosen by the majority, the employees of an appropriate unit have the most effective means of bargaining for improvements in wages, hours, and working conditions. The policy therefore extinguishes the individual employee's power to order his own relations with his employer and creates a power vested in the chosen representative to act in the interests of all employees. "Congress has seen fit to clothe the bargaining representative with powers comparable to those possessed by a legislative body both to create and restrict the rights of those whom it represents . . . ."
>
> Integral to this federal labor policy has been the power in the chosen union to protect against erosion of its status under that policy through reasonable discipline of members who violate rules and regulations governing membership. That power is particularly vital when the members engage in strikes. The economic strike against the employer is the ultimate weapon in labor's arsenal for achieving agreement upon its terms, and "[t]he power to fine or expel strikebreakers is essential if the union is to be an effective bargaining agent. . . ."

Finally, as there is no contention that Respondent's constitutional provision or the fines levied under that policy were, in any way, other than reasonably enforced against its members, there remains for consideration only the issue of whether Respondent's constitutional provision so impairs a

[58] *Booster Lodge No. 405, International Association of Machinists and Aerospace Workers, AFL-CIO [Boeing Co.]* v. *N.L.R.B.*, 412 U.S. 84 (1973). Also see *N.L.R.B.* v. *Boeing Co., et al.*, 412 U.S. 67 (1973).

[59] *Granite State*, supra at 217.

[60] *Granite State*, supra at 216, 217; *Booster Lodge, supra* at 88.

[61] *Booster Lodge, supra* at 88.

[62] 394 U.S. 423.

[63] *Supra* at 180–181.

policy Congress has embedded in the labor laws that said provision is *per se* violative of Section 8(b)(1)(A) of the Act. I conclude that this inquiry must be answered in the negative. Obviously, the constitutional provision contains some restriction on members' rights, but where, as here, the members freely, knowingly, and expressly agree to such limitations in order to attain the additional strength such a prior commitment gives to the strike as an economic weapon, I can perceive no reason in Board law, Supreme Court precedent, or overall labor policy to declare such a prior commitment a nullity.[64] It must be stressed that the constitutional provision here in issue does not constitute a flat prohibition on all resignations, but merely restricts their effect during ongoing, lawful strikes in order to protect the Union and its members who honor their prior commitment not to engage in strike-breaking.

In effect, the provision permits the Union to enforce its contract with each member—a contract which was freely entered into by all parties—and thereby protect its other members then exercising "the ultimate weapon in labor's arsenal."[65] The member may, of course, prevail upon his fellow members to cease their concerted activity or to alter the rule but voluntarily having accepted the benefits and liabilities occasioned by union membership, including an express agreement not to resign membership during a strike and thereafter cross the union's picket line, I would not permit that member thereafter to breach his contract with the union unilaterally and thereby, in effect, "have his cake and eat it too."

In sum, I would find that the Union's constitutional amendment prohibiting members from resigning during the course of a strike was a reasonable and valid restriction on resignation, protected by the proviso to Section 8(b)(1)(A) of the Act. Accordingly, I would dismiss the complaint in its entirety.

[64] For the reasons set forth in my previous dissent in this proceeding, cited above, I would overrule *Local Lodge No. 1994, International Association of Machinists and Aerospace Workers, AFL-CIO (O.K. Tool Company, Inc.)*, 215 NLRB 651 (1974), to the extent it is inconsistent with this opinion.

[65] *Allis-Chalmers, supra* at 181.